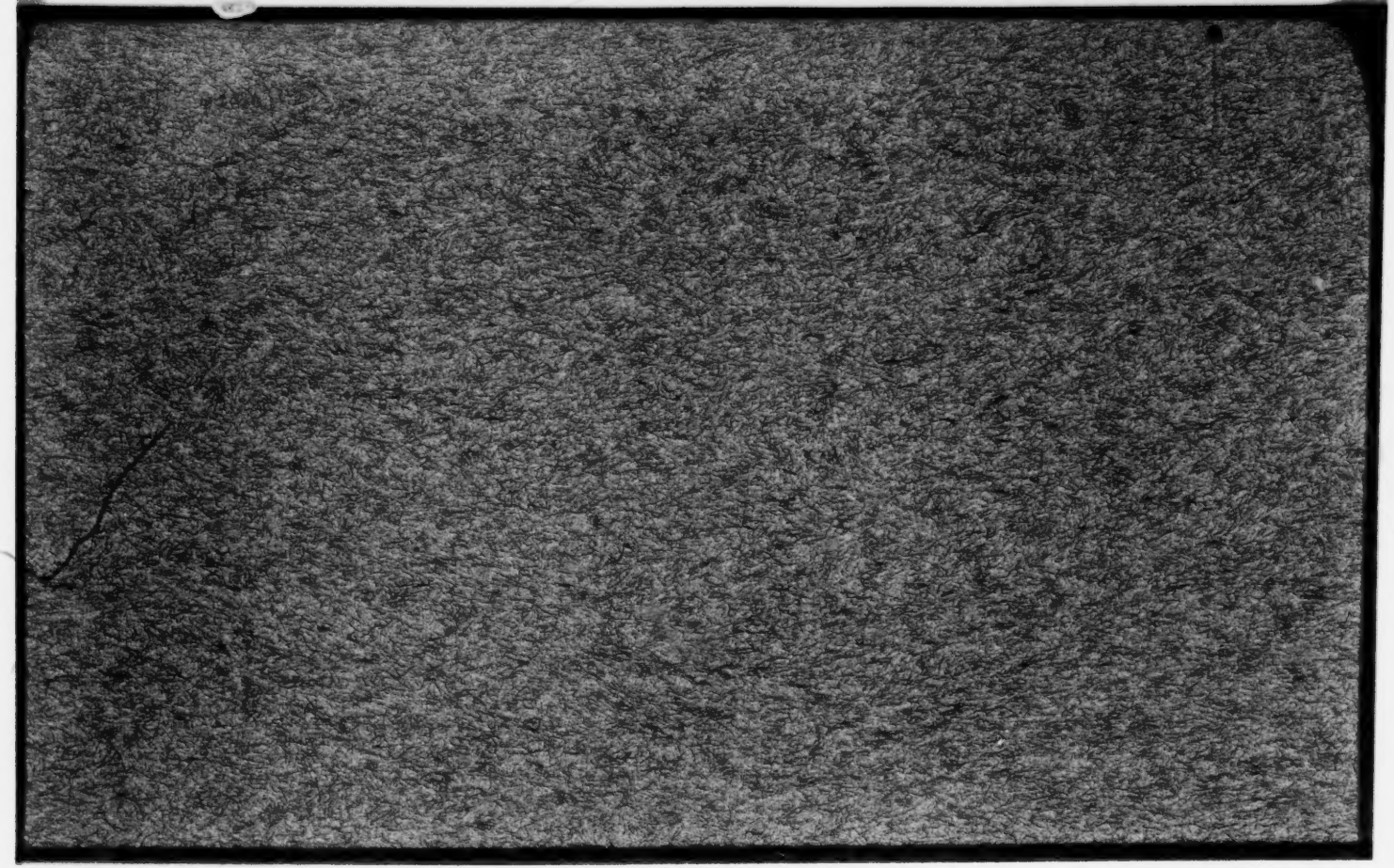
No. 817

In the Supreme Court of the United States

October Term, 1914



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OCTOBER TERM, 1944

No. 817

ARTHUR CUDMORE, SECRETARY, AUTH-LOFFLER, INC., PETITIONER

v.

CHESTER BOWLES, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

No opinion was filed by the district court. The opinion of the United States Court of Appeals for the District of Columbia (R. 18–20) is not yet officially reported.

JURISDICTION

The judgment of the United States Court of Appeals was entered on November 6, 1944. The petition for a writ of certiorari was filed in this Court on January 5, 1945. Jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

STATUTE INVOLVED

The case involves the Emergency Price Control Act of 1942, 56 Stat. 23, 50 U. S. C. App., Supp. III, 901 *et seq.*, as amended by the Act of October 2, 1942, 56 Stat. 765, 50 U. S. C. App., Supp. III, Sec. 961. The pertinent provisions of the Act are as follows:

> Sec. 202 (a). The Administrator is authorized to make such studies and investigations and to obtain such information as he deems necessary or proper to assist him in prescribing any regulation or order under this Act, or in the administration and enforcement of this Act and regulations, orders, and price schedules thereunder.
>
> (b) The Administrator is further authorized, by regulation or order, to require any person who is engaged in the business of dealing with any commodity, or who rents or offers for rent or acts as broker or agent for the rental of any housing accommodations, to furnish any such information under oath or affirmation or otherwise, to make and keep records and other documents, and to make reports, and he may require any such person to permit the inspection and copying of records and other documents, the inspection of inventories, and the inspection of defense-area housing accommodations. The Administrator may administer oaths and affirmations and may, whenever necessary, by subpena require any such person to appear and testify or to appear and produce documents, or both, at any designated place.

(c) For the purpose of obtaining any information under subsection (a), the Administrator may by subpena require any other person to appear and testify or to appear and produce documents, or both, at any designated place.

* * * * *

(e) In case of contumacy by, or refusal to obey a subpena served upon, any person referred to in subsection (c), the district court for any district in which such person is found or resides or transacts business, upon application by the Administrator, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, or both; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The provisions of this subsection shall also apply to any person referred to in subsection (b), and shall be in addition to the provisions of section 4 (a).

QUESTIONS PRESENTED

Whether an order enforcing obedience to a subpoena issued by the Price Administrator under the Emergency Price Control Act of 1942 violates the constitutional privilege against self-incrimination or the constitutional guarantee against unreasonable searches and seizures if it (1) calls for the production of specifically de-

scribed corporate records which are pertinent to a proper inquiry undertaken in pursuance of statutory authority and which cover a period of four months and (2) allows for the production thereof the full time which the person to whom it is directed claims will be required to segregate such records.

STATEMENT

Petitioner, Arthur Cudmore, is the Secretary-Treasurer of Auth-Loffler, Inc., a Delaware corporation engaged in the business of selling meats at wholesale in the District of Columbia (R. 2, 9–10). The corporation at all material times has been subject to Maximum Price Regulation No. 148 (7 F. R. 8609), issued under Section 2 (a) of the Emergency Price Control Act of 1942, prescribing the maximum prices at which dressed hogs and wholesale pork cuts may be sold or purchased in the course of trade or business at wholesale. As used in the regulation, the term wholesale pork cuts includes pork and pork products (Sec. 1364.35).

The Price Administrator having determined that an investigation was proper to ascertain whether the corporation was complying with the Act and regulation, an investigator of the Office of Price Administration pursuant to instruction called at the corporation's place of business and requested permission to inspect all invoices kept by the corporation showing all sales and pur-

chases of pork and pork products by the corporation from July 1, 1943, to October 30, 1943 (R. 3). Permission to inspect these records was refused (R. 3). Thereupon, the Price Administrator, in accordance with the provisions of Section 202 (e) of the Act, issued a subpoena directing the petitioner as the custodian of the corporation's records to appear and produce before an enforcement attorney of the Office of Price Administration all invoices kept by the corporation showing all purchases and sales of pork and pork products by the corporation during the period from July 1, 1943, to October 30, 1943 (R. 3, 5). The petitioner having failed to comply with the subpoena (R. 4, 12), the Price Administrator brought a proceeding in the district court under Section 202 (e) of the Act to compel compliance therewith (R. 2). After a hearing, the court issued a final judgment requiring the petitioner either to permit the invoices to be inspected by investigators of the Office of Price Administration at the corporation's place of business, or, at his election, to produce them within a period of one month at the office of the Office of Price Administration (R. 12–13). The United States Court of Appeals for the District of Columbia affirmed the judgment.

ARGUMENT

The decision which petitioner seeks to have reviewed is in harmony with the decisions of this Court and is not in conflict with the decision of any

other circuit court of appeals. No question is presented which has not already been decided by this Court.

That it is within the limits of Congressional authority to empower an administrative officer or agency to issue subpoenas calling for the production of evidence and provide for the enforcement thereof by judicial proceedings, is now too well established to admit of doubt. *Interstate Commerce Commission* v. *Brimson,* 154 U. S. 447; *Endicott Johnson Corp.* v. *Perkins,* 317 U. S. 501, 510. The power thus delegated to an administrative officer or agency must, it is true, be exercised so as not to violate the constitutional privilege against self-incrimination or the constitutional guaranty against unreasonable searches and seizures. *Federal Trade Com'n* v. *American Tobacco Co.,* 264 U. S. 298; *Hale* v. *Henkel,* 201 U. S. 43; *Boyd* v. *United States,* 116 U. S. 616. But the order which the court below affirmed and which petitioner seeks to have reviewed violates neither of these constitutional rights.

1. The privilege against self-incrimination is a purely personal one. It cannot be invoked by or on behalf of a corporation, or by a corporate officer to resist the compulsory production of corporate records, even though they may tend to incriminate him personally. *United States* v. *White,* 322 U. S. 694, 699. The order here assailed called only for the production of corporate records, and plainly does not infringe any privi-

lege to which petitioner can lawfully claim to be entitled.

2. Nor can the order be challenged on the ground that it violates the constitutional guaranty against unreasonable searches and seizures. It calls only for the production of records clearly relevant to an inquiry or investigation which the Administrator has lawfully undertaken in pursuance of authority conferred on him by an Act of Congress and specifically describes the records to be produced—invoices covering the purchase and sale of pork during a period of only four months. This Court has repeatedly held that a subpoena thus limited does not violate the constitutional prohibition against unreasonable searches and seizures. *Brown* v. *United States*, 276 U. S. 134; *Consolidated Rendering Co.* v. *Vermont*, 207 U. S. 541; *Wheeler* v. *United States*, 226 U. S. 478. That the order calls for a large number of documents or may cause petitioner considerable expense is not enough to stamp it as unreasonable. Compare *Wheeler* v. *United States*, 226 U. S. 478; *Nelson* v. *United States*, 201 U. S. 92; *Consolidated Rendering Co.* v. *Vermont*, 207 U. S. 541, 554. Nor can it be said to be unreasonable in respect of the time which it allowed for the production of the records. It allowed the full time which petitioner claimed would be required to assemble the records, and as the court below observed, there is no suggestion that a request for additional time would not have received sympa-

thetic consideration. (R. 20.) Cf. *Hale* v. *Henkel,* 201 U. S. 43, 70.

3. The subpoena which the order enforced was issued in connection with an investigation which the Administrator had undertaken to determine whether the corporation of which petitioner is the secretary was complying with the Act and the applicable maximum price regulation. Both the inspection and the production of records are authorized. (Sec. 202 (b) and (c), *supra,* pp. 2–3.) The records called for were plainly relevant to the investigation and the issuance of a subpoena in aid thereof was clearly proper. *Endicott Johnson Corp.* v. *Perkins, supra.* Petitioner's contention that a subpoena may be used only to obtain evidence for use in a pending proceeding is without merit. *Ibid.*

CONCLUSION

It is respectfully submitted that the petition should be denied.

Respectfully submitted.

CHARLES FAHY,
Solicitor General.

THOMAS I. EMERSON,
Deputy Administrator for Enforcement,

FLEMING JAMES, JR.,
Director, Litigation Division,

DAVID LONDON,
Chief, Appellate Branch,
Office of Price Administration.

JANUARY 1945.

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